

REMARKS

Claims 1, 3-22 are pending. Claims 2, 23-34 have been canceled without prejudice and without acquiescence. Claims 1, 10 and 22 have been amended without prejudice and without acquiescence to clarify the claim scope. Claims 35-37 have been added. Support for these claims can be found in the originally filed claims. Applicants retain the right to file any divisional and/or continuation applications from any canceled subject matter. No new matter has been added.

The issues outstanding in this application are as follows:

- Claims 10 and 22 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite.
- Claims 1-6, 11-15, 18-22 and 34 have been rejected under 35 U.S.C. §102(b), as being anticipated by Ando et al. (US Patent No. 5,576,299).
- Claims 1-7, 11-22 and 34 have been rejected under 35 U.S.C. §102(b), as being anticipated by Kurznel et al. (US Patent Application No. US 2003/0056067).
- Claims 1-4, 8, 9, 11-13, 15, 18-19, 33 and 34 have been rejected under 35 U.S.C. §103(a), as being unpatentable over Olmarker et al. (WO 02/080891) in view of Hanson et al. (WO 00/01730).

Applicants respectfully traverse the outstanding rejections and objections, and applicants respectfully request reconsideration and withdrawal thereof in light of the amendments and remarks contained herein.

I. U.S.C. §112, second paragraph

Claims 10 and 22 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Applicants respectfully traverse.

In order to advance the prosecution of the present application, Applicants have amended without acquiescence and without prejudice claims 10 and 22. Claim 10 has been amended to indicate that the percentage of N-terminal lactoferrin variant in the lactoferrin

composition is weight by weight. Thus, the amount of lactoferrin variant is at least 1% to at least 50% w/w to lactoferrin. Claim 22 has been amended to depend from claim 20 which relates inhibition of cytokines. Thus, in view of these amendments, Applicants request withdrawal of the rejection.

II. 35 U.S.C. §102(b)

A. Ando et al.

Claims 1-6, 11-15, 18-22 and 34 are rejected under 35 U.S.C. §102(b), as being anticipated by Ando et al. (US Patent No. 5,576,299) Applicants respectfully traverse.

In order to advance the prosecution of the present invention, Applicants have amended without acquiescence and without prejudice independent claim 1 to indicate that the pain is associated with cancer, disorders of the central nervous system or surgery, which is not taught or suggested in Ando et al. Applicants assert that Ando et al. does not identify, mention or suggest the use lactoferrin to treat pain is associated with cancer, disorders of the central nervous system or surgery. If the Examiner continues to maintain this rejection, then Examiner is requested to make of record the passage relied upon, or state for the record that no such teaching can be found in the Ando. See, *In re Gartside*, 203 F.3d 1305, 53 USPQ2d 1769 (Fed. Cir. 2000).

In view of the amendments contained herein, Applicants assert that Ando et al. do not anticipate independent claim 1, and thus, Applicants respectfully request that the rejection be withdrawn.

B. Kruzel et al.

Claims 1-7, 11-22 and 34 are rejected under 35 U.S.C. §102(b), as being anticipated by Kruzel et al. (US Patent No. 5,576,299) Applicants respectfully traverse.

In order to advance the prosecution of the present invention, Applicants have amended without acquiescence and without prejudice independent claim 1 to indicate that the pain is associated with cancer, disorders of the central nervous system or surgery, which is not taught or suggested in Kruzel et al. Applicants assert that Kruzel et al. does not identify,

mention or suggest the use lactoferrin to treat pain is associated with cancer, disorders of the central nervous system or surgery. If the Examiner continues to maintain this rejection, then Examiner is requested to make of record the passage relied upon, or state for the record that no such teaching can be found in the Kruzel. See, *In re Gartside*, 203 F.3d 1305, 53 USPQ2d 1769 (Fed. Cir. 2000).

In view of the amendments contained herein, Applicants assert that Kruzel et al. do not anticipate independent claim 1, and thus, Applicants respectfully request that the rejection be withdrawn.

III. 35 U.S.C. §103(a)

Claims 1-4, 8, 9, 11-13, 15, 18-19, 33 and 34 have been rejected under 35 U.S.C. §103(a), as being unpatentable over Olmarker et al. (WO 02/080891) in view of Hanson et al. (WO 00/01730). Applicants respectfully traverse.

In order to advance the prosecution of the present invention, Applicants have amended without acquiescence and without prejudice independent claim 1 to indicate that the pain is associated with cancer, disorders of the central nervous system or surgery, which is not taught or suggested in Olmarker et al nor Hanson et al. Applicants assert that neither Olmarker et al. nor Hanson et al identify, mention or suggest the use lactoferrin to treat pain is associated with cancer, disorders of the central nervous system or surgery. If the Examiner continues to maintain this rejection, then Examiner is requested to make of record the passage relied upon, or state for the record that no such teaching can be found in the Kruzel. See, *In re Gartside*, 203 F.3d 1305, 53 USPQ2d 1769 (Fed. Cir. 2000).

In view of the amendments contained herein, Applicants assert that Ando et al. do not anticipate independent claim 1, and thus, Applicants respectfully request that the rejection be withdrawn.

CONCLUSION

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. 10315951 from which the undersigned is authorized to draw.

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Respectfully submitted,

By 

Melissa W. Acosta

Registration No.: 45,872

FULBRIGHT & JAWORSKI L.L.P.

Fulbright Tower

1301 McKinney, Suite 5100

Houston, Texas 77010-3095

(713) 651-5151

(713) 651-5246 (Fax)

Agent for Applicant